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SENATE

{ REPORT
No. 813

HARVEY MCFARLAND AND LAURANCE ANTHONY WARNOCK

SEPTEMBER 24 (legislative day, SEPTEMBER 19), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1128]

The Committee on the Judiciary, to which was referred the bill (H. R. 1128) for the relief of Harvey McFarland and Laurance Anthony Warnock, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of \$14,000 to Laurance Anthony Warnock and the sum of \$10,000 to Harvey McFarland, both of Everett, Wash., in full settlement of all claims against the United States for personal injuries sustained as the result of an accident involving a United States Army vehicle on October 27, 1949, at the intersection of Broadway and California Streets in the city of Everett, Wash.

STATEMENT

An Air Force vehicle, a 2½-ton truck, was dispatched to Air Force Pvt. Chester D. Somers on October 27, 1949, to proceed on an authorized trip to Everett, Wash. Upon arrival in Everett, the truck was parked in a legally designated parking place and left unattended. Air Force Pvts. Ernest S. Murphy and Jerry L. Evans, attached to the Six Hundred and Thirty-fifth Aircraft Control and Warning Squadron, who were intoxicated, entered the truck without authority, and Private Murphy proceeded to drive it off for the apparent purpose of joyriding. The truck was driven through the streets of Everett at a speed of approximately 45 miles per hour, zigzagging from one side of the street to the other. Proceeding west on California Street, the

Government vehicle ran through an arterial stop sign at the intersection of California and Broadway Streets, and struck a 1939 Plymouth sedan proceeding south on Broadway. This vehicle was owned and operated by Mr. Warnock, and Mr. McFarland was a passenger. The airmen fled from the scene of the collision. The Plymouth, which was damaged beyond repair, was covered by insurance at a salvage value of \$700. Mr. Warnock bore \$50 of the loss under the deductible clause of his insurance, and the Pacific Indemnity Co. is subrogated for the balance of \$650. Both claimants were severely injured. Mr. Warnock was hospitalized until January 11, 1950, and Mr. McFarland until December 12, 1949.

Claimants were examined at the United States Army Hospital at Fort Lawton, Wash., on March 27, 1951. Examination revealed that Warnock, age 30, to have a shortening of the left lower limb, resulting in 10 percent total disability; atrophy of the left thigh and calf muscle, resulting in a 10 percent temporary disability; and an apparent nerve damage of the distal branches of peroneal nerves, resulting in a temporary (but possibly permanent) 10 percent disability. The examination revealed that McFarland, age 27, to have healed fractures of the seventh, eighth, and ninth ribs, and an absence of the right kidney. All the foregoing disabilities of both claimants are attributable, in the opinion of medical personnel, to the injuries sustained as a result of the accident with the Government vehicle on October 27, 1949.

The Air Force further states that on the date of the collision, Mr. Warnock was a division manager of Sears, Roebuck & Co., with an average salary of \$80 per week. Since his recovery he has had to take a different position with the company at a loss in salary of approximately \$73 per month. On the date of the collision, Mr. McFarland was a division manager of Sears, Roebuck & Co., with an average monthly salary of \$240. Since the date of the collision, he has had to accept a different position with the company at a reduction of \$60 per month in salary. Mr. Warnock's total bills for hospital, nursing, and medical expenses are approximately \$3,313.16. Mr. McFarland's expenses are approximately \$938.

The Department of the Air Force in recommending favorable consideration of this bill states:

The facts clearly establish that the claimants were injured in a collision involving a United States Air Force vehicle driven by a member of the United States Air Force, without any contributory negligence on their part. The facts also show that the accident occurred when the Government vehicle involved was being operated by a member of the United States Air Force acting outside the "scope of his office or employment," as that term is used in the Federal Tort Claims Act.

The city of Everett, Wash., has an ordinance which provides:

"No person operating or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key."

Due to the construction of this type Government vehicle, Private Somers would not have been able to lock the ignition when he parked the truck.

The Department of the Air Force favors relief for Mr. Warnock and Mr. McFarland; however, it is recommended that such relief be commensurate with actual expenses incurred by the claimants, together with a reasonable amount representing the loss of future earnings, and for pain and suffering. The sum of \$14,000, as stated in H. R. 1827, is recommended as a fair and reasonable settlement in the case of Mr. Warnock; however, it is recommended that \$10,000 would adequately compensate Mr. McFarland.

Claimants herein have no remedy available to them except by private relief legislation. The two soldiers responsible for causing this accident were convicted of car theft and are presently serving sentences in the State penitentiary at Walla Walla, Wash.

The committee in considering these claims has made the finding that the amounts contained in the bill represent compensation for personal injuries and consequent pain and suffering, incurred by reason of this accident.

Therefore, the sums so awarded should not be subject to any claim for reimbursement to any insurance carrier.

In view of the circumstances as set out hereinabove, the committee is of the opinion that this is a meritorious claim and recommends payments to claimants in the amounts set out in H. R. 1128.

Attached hereto and made a part of this report is the letter from the Department of the Air Force, and affidavits submitted by the claimants.

DEPARTMENT OF THE AIR FORCE,
Washington, July 10, 1951.

DEAR MR. CHAIRMAN: I refer to your request for a report on H. R. 1827, a bill for the relief of Laurence Anthony Warnock, and H. R. 1128, a bill for the relief of Harvey McFarland.

The purpose of H. R. 1827 and H. R. 1128 is to authorize and direct the Secretary of the Treasury to pay to Laurence Anthony Warnock and Harvey McFarland, respectively, the sum of \$14,000 in settlement of all claims against the United States for injuries sustained as a result of a collision involving a United States Air Force vehicle on October 27, 1949, at the intersection of Broadway and California Streets in the city of Everett, Wash. Each bill contains a recital to the effect that the driver of the Government vehicle was not acting within the scope of his employment.

The records of the Department of the Air Force disclose that an Air Force vehicle, a 2½-ton truck, was dispatched to Air Force Private Chester D. Somers on October 27, 1949, to proceed on an authorized trip to Everett, Wash. Upon arrival in Everett, the truck was parked in a legally designated parking place and left unattended. Air Force Privates Ernest S. Murphy and Jerry L. Evans, attached to the Six Hundred and Thirty-fifth Aircraft Control and Warning Squadron, who were intoxicated, entered the truck without authority, and Private Murphy proceeded to drive it off for the apparent purpose of joy riding. The truck was driven through the streets of Everett at a speed of approximately 45 miles per hour, zigzagging from one side of the street to the other. Proceeding west on California Street, the Government vehicle ran through an arterial stop sign at the intersection of California and Broadway Streets, and struck a 1939 Plymouth sedan proceeding south on Broadway. This vehicle was owned and operated by Mr. Warnock, and Mr. McFarland was a passenger. The airmen fled from the scene of the collision. The Plymouth, which was damaged beyond repair, was covered by insurance at a salvage value of \$700. Mr. Warnock bore \$50 of the loss under the deductible clause of his insurance, and the Pacific Indemnity Co. is subrogated for the balance of \$650. Both Mr. Warnock and Mr. McFarland were severely injured. Mr. Warnock was hospitalized until January 11, 1950, and Mr. McFarland until December 12, 1949.

On March 27, 1951, Mr. Warnock and Mr. McFarland were examined at the United States Army Hospital at Fort Lawton, Wash. The examination revealed Mr. Warnock, age 30, to have a shortening of the left lower limb, resulting in permanent 10 percent disability; atrophy of the left thigh and calf muscle, resulting in a temporary 10 percent disability; and an apparent nerve damage of the distal branches of peroneal nerves, resulting in a temporary (but possibly permanent) 10 percent disability. The examination revealed Mr. McFarland, age 27, to have healed fractures of the seventh, eighth, and ninth ribs, and an absence of the right kidney. All the foregoing disabilities of both men are attributable, in the opinion of medical personnel, to the injuries sustained as a result of the accident with the Government vehicle on October 27, 1949.

The records of the Department of the Air Force further disclose that on the date of the collision, Mr. Warnock was a division manager of Sears, Roebuck & Co., with an average salary of \$80 per week. Since his recovery he has had to take a different position with the company at a loss in salary of approximately \$73 per month. On the date of the collision, Mr. McFarland was a division manager of Sears, Roebuck & Co., with an average monthly salary of \$240. Since the date of the collision, he has had to accept a different position with that company at a reduction of \$60 per month in salary. Mr. Warnock's total bills for hospital, nursing, and medical expenses are approximately \$3,313.16. Mr. McFarland's expenses are approximately \$938.

The facts clearly establish that the claimants were injured in a collision involving a United States Air Force vehicle driven by a member of the United States Air Force, without any contributory negligence on their part. The facts also show that the accident occurred when the Government vehicle involved was being operated by a member of the United States Air Force acting outside the "scope of his office or employment," as that term is used in the Federal Tort Claims Act.

The city of Everett, Wash., has an ordinance which provides:

"No person operating or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key."

Due to the construction of this type Government vehicle, Private Somers would not have been able to lock the ignition when he parked the truck.

The Department of the Air Force favors relief for Mr. Warnock and Mr. McFarland; however, it is recommended that such relief be commensurate with actual expenses incurred by the claimants, together with a reasonable amount representing the loss of future earnings, and for pain and suffering. The sum of \$14,000, as stated in H. R. 1827, is recommended as a fair and reasonable settlement in the case of Mr. Warnock; however, it is recommended that \$10,000 would adequately compensate Mr. McFarland.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

EUGENE M. ZUCKERT,
Assistant Secretary of the Air Force.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

AFFIDAVIT

STATE OF WASHINGTON,
County of Snohomish, ss:

Harvey McFarland, being first duly sworn on oath, deposes and says: That he is the claimant herein and that he is a resident of the State of Washington, with his home at 2932 Oakes Avenue, in Everett. That he was the division manager of divisions 30 and 53 (paint and wallpaper) of Sears, Roebuck & Co., in Everett, Wash., on the 27th day of October, 1949; and as such he had the duty of supervising his crew, promoting sales, ordering and procuring merchandise, and planning advertising for the said departments. That his salary on the said date and for some time prior was \$52 a week, plus one-half of 1 percent commission of the total department gross sales. That his average salary was \$240 per month.

That on the 27th day of October 1949, it was necessary for him to come back to the store and work after the regular working day had finished, at 7 p. m. of that evening; that he worked for the entire evening until 10 p. m. of that evening with O. R. Lawrence, Laurance Anthony Warnock, Floyd Higley, and Harold Hileman.

After completing his work in his department, he left the Sears, Roebuck & Co. store at 10 p. m. with Laurance Anthony Warnock, who was driving his 1939 Plymouth sedan automobile; that upon leaving the store at 10 p. m., affiant and Laurance Anthony Warnock went directly to Carter's Drug Store, located at 1522 Broadway in the city of Everett, Wash.; that he and Mr. Warnock left the said Carter's Drug Store after a period of about 5 minutes had elapsed and started in a southerly direction on Broadway, a street in the city of Everett. That he and Mr. Warnock went approximately three blocks down Broadway in a northerly direction and at the intersection of California and Broadway, the automobile of Mr. Warnock was involved in an accident and affiant was rendered unconscious.

That he does not remember any of the circumstances of the accident, due to a blow on the head and a fracture but he has been informed and he does believe that Laurence Anthony Warnock was driving his 1939 Plymouth sedan, automobile on the right-hand side of the road in a lawful manner, going in a southerly direction at a speed of about 15 miles an hour, when his (the said Laurence Anthony Warnock's) car was struck from the left; that the street, the said Broadway, is an arterial highway and that there was no obligation on the part of Laurence Anthony Warnock to stop at the intersection of California and Broadway and he did not do so, but endeavored to drive his automobile down Broadway through the intersection. That affiant has since learned that a stolen Army truck smashed into the said automobile and another automobile operated by one H. M. Rhodes of 1211 Poplar Street, Everett, Wash.; that the said stolen Army truck was a GMC 6x6 and was driven by two soldiers whose names are Jerry L. Evans and Ernest Murphy who were subsequently convicted for car theft and are presently in the State penitentiary at Walla Walla, Wash.; that the said Army truck was coming east on California Street and being pursued by another automobile and was driven at a terrifically high rate of speed and went through the arterial stop sign, crashing into the left side of Laurence Anthony Warnock's automobile, as more particularly described in the body of the claim.

That affiant and the said Laurence Anthony Warnock were very seriously injured and that affiant is submitting a report of Dr. John E. Flynn, M. D., which will describe the exact condition of affiant and the injuries he received from the said accident.

That he is a veteran of the Second World War and served in the European theater of war, and has been honorably discharged. That the accident has very seriously handicapped him physically, causing affiant to have periods of blackout. That, on the occasion of the 21st of July 1950, he suffered one of the said blackouts and fell down the stairs of his home and injured and bruised himself. That he has lost considerable energy, is listless and unable to perform his duties of his job in an efficient manner, due to the aforesaid and because he suffers constantly from backaches which at periods become almost intolerable.

That he is presently a clerk in his department in the said Sears, Roebuck Co., having been demoted from the position of division manager, since and as a result of the injuries received by him in the said accident. That he is receiving, as a result of the said demotion, about \$60 a month less in salary; that he has also lost his rightful chance of promotion which he would have had had his health continued.

That he is 26 years of age and has a wife, who is dependent upon him for support; and has suffered horrible shock, to mind and body which has caused much nervousness and anxiety. That the severe shock and blow to the body in the vicinity of the kidney and the immediate injury to the kidney and other portions of his anatomy have caused him to have backaches as aforesaid and have caused him extreme pain and suffering; that he has lasting headaches, which cause him no end of agony making it difficult to carry on his duties as a clerk at Sears, Roebuck & Co. and his domestic duties at home.

That it is very probable that affiant will never fully recover and that he will never be able to work in the energetic and efficient manner which had, previous to the said accident, caused him to gain advancement and recognition in the jobs he has held.

HARLEY MCFARLAND.

Subscribed and sworn to before me this 1st day of August 1950.

[SEAL]

JOHN M. WARNOCK,

Notary Public in and for the State of Washington, residing at Everett.

AFFIDAVIT

STATE OF WASHINGTON,
County of Snohomish, ss:

Glenn Leon McGinnis, after being first duly sworn on oath, deposes and says: That he is 41 years of age, a resident of Everett, Snohomish County, Wash., with address at 5912 Commercial Street in the city of Everett, Wash.

That on the 27th day of October, 1949, at about 10:26 p. m., he was parked in a service station in the city of Everett at the corner of Everett Avenue and Broadway and was having his automobile serviced, that at such time and place, he heard a crash to the south on Broadway and left the service station and drove south on Broadway to the corner of California Street and Broadway and there found that an Army truck had crashed into the side of a 1939 Plymouth, there was garbage

all over the street and one woman lying on the street, in back of the Army truck. There was one fellow sitting in the 1939 Plymouth and he was covered with blood and out cold. He later found that this fellow in the car, was Laurence A. Warnock. There was another fellow on the street back of the 1939 Plymouth, he looked as though the car was on his arm. Affiant then went to his own car and told his wife that there was one man dead. Everything was absolutely still, no noise whatsoever. All the injured were out cold.

The bumper of the Army truck was halfway through the 1939 Plymouth in the front. It was past the steering post and both doors on the opposite side were open.

There was no driver in the Army truck. The man there at the scene said two fellows had been in the truck but they had gotten out the opposite side and run away. This other man couldn't identify them as he hadn't seen them. From the conditions, it appeared that the Army truck was the cause of and responsible for the accident.

The Army truck had shoved the 1939 Plymouth across the street and pinned it against the curb.

It was quite some time before the ambulance arrived. Affiant hadn't called it as someone had called it before he arrived. By the time it got there quite a crowd had gathered so they lifted the car off Mr. McFarland who was pinned beneath it. It took so long for the ambulance to get there, they already had him out.

GLENN MCGINNIS.

Subscribed and sworn to before me this 31st day of July 1950.

[SEAL]

JOHN M. WARNOCK,

Notary public in and for the State of Washington, residing at Everett.

AFFIDAVIT

STATE OF WASHINGTON,

County of Snohomish, ss:

I, Harvey McFarland, being first duly sworn on oath, depose and say: That I am the claimant, the subject of H. R. 1128, introduced in the House of Representatives, January 8, 1951, by the Honorable Mr. Jackson, Representative of the State of Washington. That to bring the Judiciary Committee up to date on my physical condition, I relate, to wit:

That since the removal of my right kidney, brought about as a result of the accident in question, I have had recurrent sleepless nights, pain, inconvenience, and that the added load on my other kidney makes necessary repeated urination throughout the day and night, and further, the area from which the right kidney was removed, pains acutely whenever any slight shock or jar occurs.

That subsequent to the accident in question and to this date, I have experienced headaches as the result of the skull fracture received in said accident. The headaches have continued, for a time improving and then for a time becoming more severe in intensity, coming and going in waves, but no appreciable relief or cure has been effected.

That since the said accident, I have been receiving from Dr. Flynn, of Everett, Wash., traction treatments of the spinal area to bring back into place vertebrae that were dislocated by said accident; this dislocation of the spinal cord coupled with the kidney removal makes it impossible for me to do any work requiring lifting or physical exertion.

That since and as a result of the accident, in that my neck was run over in the accident, my sense of taste has been so destroyed that I have trouble distinguishing between various flavors and foods. I have been instructed by Dr. Flynn that my taste buds were so injured that my capacity to taste was thereby destroyed. He expressed hope that my sense of taste would return in a period of time; however, to date the condition has improved very slightly.

That I have trouble taking deep and normal breaths brought about by the adhesions caused by the fracture of my ribs in 10 places on my left side and that this condition, of course, limits my activities, both in sports and occupation.

That I have at my disposal X-rays which will corroborate the facts as to my physical condition at the time of the accident but that this affidavit is primarily to convey to those interested my condition as of this date.

HARVEY MCFARLAND.

Subscribed and sworn to before me this 15th day of January 1951.

[SEAL]

PAUL M. STOCKER,

Notary public in and for the State of Washington, residing at Everett.

AFFIDAVIT

STATE OF WASHINGTON,

County of Snohomish, ss:

I, Laurance A. Warnock, being first duly sworn on oath, depose and say that as a result of the accident in question, I still have to this date certain symptoms, pains, and other manifestations of the injuries I received the date of the accident.

That I still have a noticeable stiffness of the left ankle restricting its action and the left leg is subject to continual inflammation and swelling, causing pain and noticeable limping.

That the bladder condition caused by said accident, at this date still causes discomfort and inconvenience in that I have limited control and difficulty in urinating.

That fracture below the left knee where the doctors placed a silver collar is continually sore and aches whenever I walk.

That due to the shearing off of my bladder at its neck and base and the rupture of the urethra, I have suffered a greatly diminished sexual capacity and activity.

That because of the crushed chest which I received as a result of said accident, I seem to have an unusual susceptibility to pulmonary infections during the present winter months, and I have had a continual condition of flu attacks and chronic colds.

That since and as a result of the said accident, although my employer would welcome my return to the shoe department of Sears, Roebuck & Co., because of the aforementioned physical defects, existent to this date, it is impossible for me to handle that position because of the physical demands.

That due to the multiple fracture of the pelvis, I have experienced great discomfort in sitting.

LAURANCE A. WARNOCK.

Subscribed and sworn to before me this 15th day of January 1951.

[SEAL]

PAUL M. STOCKER,

Notary Public in and for the State of Washington, residing at Everett.

THE EVERETT CLINIC,
Everett, Wash., January 23, 1951.

Re Harvey McFarland.

To Whom It May Concern:

The above-named was involved in an automobile accident the evening of October 27, 1949. He sustained multiple severe injuries, including a skull fracture and multiple rib fractures. Subsequently an attack of renal colic led to investigation that disclosed a right hydronephrosis which required removal of the right kidney.

In August 1950 he developed a severe back pain which had all the clinical manifestations of a herniated intervertebral disk. This has been treated conservatively and at this time is fairly well controlled. The exact relationship of this disturbance to the accident cannot be established.

At the present time Mr. McFarland still has frequent severe headaches from the head injury, chest pain on exertion and deep inspiration, and these, with the limitations imposed by the back disability interfere considerably with his working, and definitely limit him in the type of employment available to him. All of these disabilities will probably be of a more or less permanent nature.

J. E. FLYNN, M. D.

THE EVERETT CLINIC,
Everett, Wash., June 22, 1950.

Re Harvey McFarland.

To Whom It May Concern:

The above-named was involved in an automobile accident on the evening of October 27, 1949. He sustained extensive contusions to the head, trunk, and extremities. There were many rib fractures and a linear fracture of the skull.

On the evening of November 19, 1949, he suffered a severe attack of renal colic, and stated he had a milder similar attack a few days earlier. Investigation disclosed a right hydronephrosis without evidence of lithiasis. Some narrowing

was demonstrated at the ureteropelvic junction. His urine was grossly bloody immediately after the accident, and contained blood and some pus after the renal colic.

A right nephrectomy was performed. No cause for the hydronephrosis was demonstrated at operation other than narrowing at the ureteropelvic junction.

Inasmuch as Mr. McFarland sustained severe contusions over the kidneys, and the urine was grossly bloody, and further, because the renal colic appeared as a complication of his convalescence, it was considered part of the accident case and so handled, according to our records.

J. E. FLYNN, M. D.

